

the original contract at the written request of the tribal organization designated in the tribal resolution. Requests for contract renewals shall be made as follows:

(a) If the original contract provided services to only one Indian tribe, written applications for renewal shall be sent by the tribal organization to the Area Office as follows:

(1) Directly, when the tribal organization involved is the governing body of the tribe.

(2) Through the governing body of the tribe for review when the tribal organization is not the governing body of the tribe. Submission shall be made to the governing body at least 75 calendar days before the original contract expires. The tribal organization shall promptly notify the IHS Area Office in writing of the date the tribal governing body received the application. If, within 45 calendar days after receiving the application, the tribal governing body does not provide the IHS Area Director with a formal resolution objecting to the application for renewal, the absence of receipt of such a resolution shall constitute the tribe's request for renewal of the contract.

(b) If the original contract provided services to more than one Indian tribe, the tribal organization must give a copy of the written application for renewal to each tribal governing body at least 75 calendar days before the original contract expires. The tribal organization shall promptly notify the IHS Area Office where the application is to be submitted in writing, of the date the tribal governing bodies received copies of the application. If, within 45 calendar days after receiving copies of the application none of the tribal governing bodies provide the appropriate IHS Area Office with a formal resolution objecting to the application for renewal, the absence of receipt of such resolutions shall constitute the tribes' request for renewal of the contract. If one or more of the tribal governing bodies involved object to the renewal, the contract will not be made until all the tribal governing bodies have approved the request or the matter is otherwise resolved.

#### § 36.208 Evaluation criteria.

(a) Indian Self-Determination Contract Proposals will be evaluated to determine:

(1) If the service to be rendered to Indian people by the proposed contract will be satisfactory;

(2) If the proposed contract will assure that trust resources are protected; and

(3) If the proposed contract will ensure proper completion and maintenance of the project or function involved. Failure to meet any of the above, may be cause for declination of the Indian Self-Determination Contract Proposal. However, the burden of proof to show cause for declination lies with the approving official.

(b) To determine if an Indian Self-Determination Contract Proposal meets the above criteria, the Area Director and his staff will consider whether the tribal organization would be deficient in performance under the contract with respect to the factors listed in this paragraph.

(1) *Equipment, buildings and facilities.* No higher standards with regard to buildings, facilities, or equipment shall be applied to tribal organizations than have previously been applied to IHS. The Indian Health Service shall make available the use of all equipment which has been allocated to the operation of the program by the IHS in the past, unless the IHS determines that the provision of such equipment will seriously interfere with the IHS's ability to provide services to Indian people in noncontracted programs. Where equipment is shared by the programs to be contracted and other non-contracted programs, equipment-sharing or other suitable arrangements will be reflected in the contract.

(2) *Bookkeeping and accounting procedures.* It must be clearly established by the Indian Health Service that the tribal organization which will undertake the contract does have an adequate accounting and bookkeeping system. IHS may assist the contractor in establishing an acceptable bookkeeping and accounting system.

(3) *Substantive knowledge of the program to be contracted.* The tribal organization shall be presumed to have substantive knowledge of the program to

be contracted if it meets one or more of the following conditions:

(i) The tribal organization has successfully managed a similar program before through grant or contract for which standards have been established.

(ii) The members of the tribal organization have been consumers of such services in the past and have developed an understanding of the program sufficient to enable the tribal organization to effectively carry out the contract operation.

(iii) The tribal organization has made arrangements to obtain and to develop its knowledge of the program.

(4) *Community support.* Before the IHS can enter into a contract there must be a request made in accordance with § 36.206. The tribal governing body's resolution under § 36.206 shall be presumed to demonstrate that there is community support for the proposed contract. Any assertion of a lack of community support by persons to be served under the contract, is subject to exhaustion of tribal remedies by those making such assertions.

(5) *Adequacy of trained personnel.* The adequacy of trained personnel available to the tribal organization to carry out the proposed contract will be presumed if any of the following conditions exists:

(i) If the tribal organization has a personnel system that prescribes minimum occupational qualification standards, which shall be not less than minimum Civil Service standards where applicable and procedures for the selection of personnel on the basis of such qualifications, and the personnel to be used under the proposed contract are to be employed under the personnel system.

(ii) If there is no tribal personnel system, it will be assumed that the personnel to be employed under the proposed contract are adequately trained if the tribal organization has established position descriptions for key personnel to be employed under the contract and will establish within a reasonable time a personnel system similar to the one described in paragraph (c)(5)(i) of this section.

(6) *Other necessary components of contract performance.* (i) The contractor's proposal must demonstrate the capac-

ity to meet minimum health program and professional standards established by IHS for each major health service activity of the IHS. The Director will establish and make available to any prospective contractor the minimum standards for each major health service activity of the Indian Health Service. In evaluating the contractor's proposal, the IHS will take into account the prevailing health program and professional standards of IHS for the health service activity in the location concerned.

(ii) The contractor's proposal will be evaluated to determine the contractor's ability to meet the Uniform Administrative Standards published as a Notice of Proposed Rulemaking in February 10, 1975, 40 FR 6304.

(iii) The ability of the contractor to carry out the contract in accordance with IHS policy, the applicable regulations of this part, and the Act.

(iv) No other components shall be prescribed as a basis for declination unless such components are added to the regulations in this subpart by revision or amendment of regulations.

(7) IHS officials may not decline to enter into a contract with a tribal organization because of any objection that would be overcome through the contract.

**§ 36.209 Government property.**

(a) In carrying out a contract made under this part, the Director will wherever possible, permit a tribal contractor to use buildings, facilities, and related equipment and other personal property owned by the IHS within his jurisdiction. Arrangements on the use of IHS property shall be provided for in the contract or other agreement as appropriate. In determining whether real or personal property can be provided, he shall determine whether the IHS can provide comparable services for any of the uncontracted part of the program.

(b) Requests for the use of IHS property which arise after signing of the contract shall be submitted to the relevant IHS official by the tribal organization. Such requests should be granted unless such a use would seriously interfere with the administration of existing IHS programs. The property